

(1997) 05 AHC CK 0050
In the Allahabad High Court
Case No : C.M.W.P. No. 7945 of 1995

Kumari Mamta Jauhari

APPELLANT

Vs

State of U.P. and Another

RESPONDENT

Date of Decision : 14-05-1997

Acts Referred:

Allahabad High Court Rules, 1952 — Rule 3

Citation : (1997) AWC 172 Supp

Hon'ble Judges : D.S. Sinha, J

Bench : Single Bench

Advocate : Ashok Khare, for the Appellant; S.C. and S.K. Srivastava, for the Respondent

Judgement

D.S. Sinha, J.—Heard Sri Ashok Khare and S. K. Srivastava, learned Counsel appearing for the parties, at length and in detail.

2. It appears that this petition was heard by a Division Bench on 4th November, 1996. The Hon''ble Judges constituting the Bench delivered two different judgments. One proposing to dismiss the writ petition and the other proposing to allow the writ petition.

3. In view of the dissonance the Hon''ble Judges passed an order directing the papers of the case to be placed before the Hon''ble The Chief Justice for sending the matter for opinion to a third Judge.

4. On 19th November, 1996 the Hon''ble The Chief Justice passed the following order:

Referred to Hon''ble D.S. Sinha. J.

Sd/- D.P.M.

19.11.96.

5. Learned Counsel for the parties concede that instant reference is under Rule 3

of Chapter VIII of the Rules of Court, 1952 which reads thus:

Procedure when Judges are divided in opinion.--When a case (to which the provisions of the Code of Criminal Procedure do not apply), is heard by a Division Court composed of two or more Judges and the Judges are divided in opinion as to the decision to be given on any point, such point shall be decided according to the opinion of the majority, if there shall be a majority. Should the Judges be equally divided they may State the point upon which they differ and each Judge shall record his opinion thereon. The case shall then be heard upon that point by one or more of the other Judges as may be nominated by the Chief Justice and the point decided according to the opinion of the majority of the Judges who have heard the case including those who first heard it. (Underlining by Court)

6. While dealing with the case of M/s. Shriram Industrial Enterprises Ltd. v. Union of India and Ors. 1996 ALJ 468, after considering the provisions of Rule 3 of Chapter VIII, extracted above, a Full Bench of this Court observed thus:

The language of above quoted Rule is plain and admits of no ambiguity. If the Judges of Division Court which is composed of two Judges are equally divided in opinion, they may state the point upon which they differ and then the case shall be heard upon that point alone by one or more of the other Judges as may be nominated by the Chief Justice. The point about which a reference has been made shall then be decided according to the opinions of majority of the Judges who have heard the case including those of the Division Court which heard it initially.

(Emphasis supplied)

The Full Bench further observed as follows:

There can be no doubt that the proper course for the Judges who have dissented in their respective opinions while hearing a writ petition is not to pass final order either allowing or dismissing the same but to state their point of difference after expressing their opinions. However, it will still be open to them to state the point upon which they have differed even if they have passed final orders.

(Emphasis added)

7. Indisputably, in the instant case, the Hon''ble Judges have neither stated the point or points upon which their Lordships differed nor have their Lordships recorded their any opinion thereon.

8. In view of the law laid down by the Full Bench in the case of M/s. Shriram Industrial Enterprises Ltd. v. Union of India and Ors. (supra), it appears appropriate that the matter may be referred to the concerned Bench for formulating the point or points upon which there is difference and for recording opinion thereon.

9. Thus, it is directed that the record of the case be placed before the Hon''ble The Chief Justice for appropriate order/orders.